

Impact in law but what about practice?

Intermediaries and how they aid vulnerable people to access the Criminal Justice  
System.

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Impact in law but what about practice?

Intermediaries and how they aid vulnerable people to  
access the Criminal Justice System.

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## **Declaration**

This work is original and has not been submitted in relation to any other degree or qualification.

This research received ethical approval from the Department of Psychology Ethics Committee on 16<sup>th</sup> June 2016, DOPEC code ROMM160616.

Signed:

Date: 08/10/16

With thanks to my supervisor, Dr Michelle Mattison for her valued  
assistance with this piece of work.

With thanks also to Professor Penny Cooper, Kingston University, London  
for her respected input to this piece of research.



## Department of Psychology

### Research Module Meeting Log 2015/2016

NAME: Rebecca Sian Owen

SUPERVISOR: Dr Michelle Mattison

Date	Discussion topics
18/11/15	Initial meeting with Michelle – discussed possible project ideas relating to ‘The Advocate’s Gateway’ (TAG).
20/01/16	Meeting with Michelle once she had been confirmed as my supervisor for the project. Firmed up ideas relating to the project and confirmed that we would conduct an evaluation of TAG by means of a survey. Rough deadlines/timeline and ethics application discussed.
27/01/16	Meeting with Michelle – reviewed rationale and the beginnings of a literature review. Provided some guidance on sourcing appropriate literature. Discussed points for Michelle to raise in a meeting with Professor Penny Cooper the following day.
03/02/16	Discussed the meeting that had taken place between Michelle and Prof Penny Cooper in relation to the project. Agreed work – to put

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	together a Participant information sheet (PIS) and to start work on the survey.
<i>10/02/16</i>	Reviewed PIS and survey with Michelle, incorporating comments from Penny. Agreed amendments to be made and reviewed process for ethics application. Agreed to keep in touch via email with Michelle whilst on research leave and agreed aiming for April ethics deadline (19 <sup>th</sup> ).
<i>13/04/16</i>	Catch up meeting with Michelle. Final amendments made on ethics application – to be submitted by 19 <sup>th</sup> April. Discussed ongoing literature review and challenges of balancing ongoing dissertation commitments with taught module commitments.
<i>27/04/16</i>	Brief meeting to discuss draft outline of Introduction section. Michelle provided advice and direction on maintaining a psychological perspective in the work and provided some useful literature to begin the structured literature review.
<i>04/05/16</i>	Ethics application accepted subject to amendments – Michelle and I discussed how to address amendments needed and I provided Michelle with a draft outline for introduction section. Discussed how narrow/wide to structure the research to ensure assignment needs met but also practical application of the work achieved.
<i>20/05/16</i>	Amendments to ethics application made and discussed – Michelle to finalise a few issues and chase up support letter from ATC and then to submit amendment form.
<i>25/05/16</i>	Reviewed introduction plan and discussed overall breadth of study.

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	Still awaiting letter from ATC to accompany ethics amendment form – Michelle to chase. Discussed timescale for having survey ready to disseminate.
<i>15/06/16</i>	Ethics amendment form completed together and submitted to the admin office. Discussed amendments to survey to mirror increased breadth of study – Michelle to liaise with Penny and send additions/changes to RO for BOS completion.
<i>14/07/16</i>	Amendments now approved and BOS completed and updated with survey. Michelle to review (Penny to review) and send to Linda at ATC for circulation. RO to work on Introduction and Method sections in preparation for next meeting on 10 <sup>th</sup> August. Final draft date agreed.
<i>10/08/16</i>	Initial analysis meeting – explored analysis options and evaluated data to date. Reviewed structure and content of introduction due to responses received so far – i.e. focus on intermediary role.
<i>19/08/16</i>	Further analysis meeting – coding completed by RO and reviewed by MM – some minor alterations and discussion re. SPSS input. Agreed initial analysis techniques – frequencies and correlations. RO to begin analysis.
<i>26/08/16</i>	SPSS input reviewed by MM and analysis suggestions reviewed. MM reviewed Introduction, Method and Reference list in brief to ensure RO on right track. Suggestions made.
<i>31/08/16</i>	Results section reviewed by MM. Agreed first draft deadline again (September 19 <sup>th</sup> ) and discussion around layout and printing. RO to

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	work on first draft, keeping in mind suggestions re. linking all sections together and avoiding irrelevant detail.
<i>21/09/16</i>	Full draft feedback meeting – MM provided feedback to RO on full draft submission. RO to take on board feedback and make amendments as appropriate – for email support from MM until final submission on October 12 <sup>th</sup> 2016.

SIGNED

STUDENT \_\_\_\_\_ DATE: \_\_\_\_\_

SUPERVISOR \_\_\_\_\_ DATE: \_\_\_\_\_



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**Abstract**

Vulnerable people are more likely to encounter the justice system but less likely to achieve justice. This is due in part to the psychological and developmental challenges they face but also due to lack of recognition and appropriate adaptation in professional practice. Legislation has recognised the need for change by introducing special measures for vulnerable victims and witnesses, particularly appointment of an intermediary and further guidance for practitioners has developed in turn. To date, little is known of the practical application of such changes and whether the additional needs of the vulnerable are now adequately addressed within the justice system. To provide more insight, 20 participants engaged in a survey based study. Participants were questioned in relation to their previous experience of working with vulnerable people, their understanding of such additional needs, their use of special measures and their experience of The Advocate's Gateway website (TAG).

All respondents, primarily intermediaries were aware of how to identify vulnerabilities and the associated challenges faced in accessing the justice system. Respondents' confidence within role increased with the number of vulnerable people worked with and communication aids were utilised appropriately but with further guidance needed. All respondents utilised TAG and found its resources invaluable. These findings build on the widespread knowledge surrounding intermediaries and vulnerable people in the justice system. However, a wider sample to include legal professionals is called for in future studies to better understand the current landscape for vulnerable people attempting to access the justice system.

## Introduction

One may imagine an archetype world where no wrongdoing occurs and therefore the need for a system to investigate crime and provide recompense would not be needed. But to imagine such is idealistic and the need for a Criminal Justice System, which upholds fairness and law, and provides effective criminal investigation, is indispensable. The UK Criminal Justice System (CJS) comprises multiple agencies including the Police, the Crown Prosecution Service (CPS) and the Courts, all of whom claim to “...work together to ensure our country is a safe place to live *for all*” (CPS homepage, 2016). This may be overly idealistic, particularly for those most vulnerable such as children and adults with physical and mental incapacities. In reality, accessing the justice system can appear to be an unsurmountable challenge, particularly for the vulnerable and has led to a decrease in crimes being reported against such persons, and less reliance on them for providing witness testimony, impeding justice (Bull, 2013; Milne & Bull, 2001; Murphy & Clare, 2006).

Crimes against vulnerable people have been significantly under reported as perpetrators have not feared retribution due to the invisibility of such crimes and the lack of support available to vulnerable people in reporting such incidents (Brown, Stein & Turk, 1995; Elliott, 1998; Green, 2001; Murphy & Clare, 2006). However, increased recognition over the last 30 years has acknowledged that vulnerable people have equal right to participation and this in turn has opened the gateway for changes in the law (Memon, Vrij & Bull, 2003; Sigelman, Budd, Spanhel, & Schoenrock, 1981). It is very welcome that such revolutionary changes to the justice system have been implemented in recent years to widen access to justice for vulnerable groups; this work will explore these changes and evaluate practitioners’ knowledge and use of pertinent resources.

## **Vulnerability**

Despite a steady decline in the number of individuals coming into contact with the justice system, last year almost 1.7 million people passed through the system, a notable percentage of the overall population (Ministry of Justice, 2015). Vulnerable people will account for a considerable number within this statistic given the increased criminal victimisation recorded within this special group, with severe clinical symptoms prevalent amongst the vulnerable, often a precursor for such victimisation (Brekke, Prindle, Bae & Long, 2001; Hepner, Woodward & Stewart, 2015). Individuals with learning difficulties are considered particularly vulnerable to abuse and exploitation as are those individuals with mental illness (Crocker, Côté, Toupin, & St-Onge, 2007; Ericson, Perlman & Isaacs, 1994; Hiday, Swartz, Swanson, Borum & Wagner, 1999; Murphy & Clarke, 2006). Increased criminalisation is also prevalent within this group due to increased dependency on others, limitations in cognition and understanding of consequence and a lack of ability to assert rights under challenging circumstances (Hepner et al., 2015; Westcott & Jones, 1999).

Individuals deemed vulnerable may also live in settings prone to abuse, lack the education or communication skills to voice what has happened and support staff commonly lack the training to understand the need to report such abuses, even when the perpetrator may also be considered vulnerable (Murphy & Clare, 2006). Age is also a key risk factor for increased vulnerability and so children are often targeted precisely because of their vulnerabilities - dependence, weak and small physicality, their inability to dictate their environment, including less choice of association and the difficulties they face in accessing support (Finkelhor & Dziuba, 1994, 2001; Marchant, 2013; Plotnikoff & Woolfson, 2015).

Factors including learning difficulties, mental illness and being young of age can all increase an individual's vulnerability but vulnerability as a concept is far broader in scope. Widely used in conversation, vulnerability is often utilised as a common sense notion but when applied to such a multifaceted concept as the justice system, a clear and well formulated definition is vital. Despite this and some attempts made by the legislature and judiciary, there is no generally agreed definition, which is attributed to the relatively late start of psychological research in this area, and the fear that too narrow a definition could be patronising and discriminatory (Bull, 2010; Elliott, 1998). Gudjonsson attempts a definition - vulnerability as "...psychological characteristics or mental state which renders an [individual] prone, in certain circumstances to providing information which is inaccurate, unreliable or misleading" (2006, as cited in Myklebust, Oxburgh, Grant & Milne, 2016, p. 362). Difficulties arise here in the negative emphasis, placed only on the challenges faced by vulnerable people as opposed to how support and aids can allow for equally adequate witness testimony from such individuals.

The closest to an agreed definition of vulnerability is found in the Youth Justice and Criminal Evidence Act 1999 (YJCEA) where definition of a vulnerable person for the purposes of eligibility for special measures states –

Section 16(a) – a witness is eligible for the assistance of a special measures direction given under section 19 of that act if –

(a) The witness is under 18; or

(b) The witness has –

- a. A mental disorder, or a significant impairment of intelligence and social functioning,

Or,

- b. A physical disability or disorder,

And the court considers that the completeness, coherence and accuracy ('the quality') of evidence given by the witness is likely to be diminished by reason of those circumstances.

Age, mental illness and physical and mental incapacity are all encompassed within this definition and although some argue for a wider definition, it is said to provide appropriate legislative gateway into special measures for those deemed most in need (Ewin, 2015).

As vulnerable people develop a greater autonomy over their own lives, this in turn increases their exposure to possible exploitation and increases their risk of contact with the justice system (Murphy & Clare, 2003). Individual vulnerability can also be increased by social economic factors, education level, and disability and in some respects, political, racial and cultural factors (Ewin, 2015; O'Mahony, Marchant & Fadden, 2016). Children are a particularly vulnerable group when in contact with the justice system, given lack of understanding as to what can be expected of them, particularly in relation to memory and linguistic capacity (LaRooy, Heydon, Korkman & Myklebust, 2016). Trauma, resulting from the incident that has brought them into contact with the justice system can also increase vulnerability for individuals and can impact on response to support, particularly if mental illness is also a factor (Memon et al., 2003).

Calls have been made for a precise definition of vulnerability to allow for much needed early identification of vulnerable people when they encounter the justice system



and in turn, access to the appropriate gateway for support (Charles, 2012; Ewin, 2016; 2016; Hunter, Jacobson & Kirby, 2013; O'Mahony, Smith & Milne, 2011). The introduction of such an attempt within the YJCEA 1999 holds much promise but perhaps more work is needed to ensure early identification by all professionals, particularly for those individuals' whose vulnerabilities are initially hidden (Ewin, 2015, 2016).

It is commonplace for vulnerable people to attempt to mask any difficulties and therefore responsibility for identifying those individuals who may most need support is of paramount importance to all practitioners within the justice system (Memon et al., 2003). Research across the board highlights the need for early identification and consistent assessment of vulnerability for individuals to allow for directions for support in a timely fashion (Charles, 2012; Davies, 2010; Mitchels, 2016; Murphy & Clare, 2003, 2006; Myklebust et al., 2016; O'Mahony et al., 2016). Research has demonstrated that approximately 50% of those who are likely to benefit from additional support are not identified at the earliest possible stage leaving them to "...flounder because of failures of process" without direct specialist support (Hunter et al., 2013; Ewin, 2015, p.17). Equally, research demonstrates a clear preponderance of denial and ignorance as to who is responsible overall for identification of vulnerable persons within the CJS (Gudjonsson, & Joyce, 2011; Plotnikoff & Woolfson, 2002). The Crown Prosecution Service (CPS) are responsible for prosecuting criminal cases investigated by the Police in England and Wales and both agencies have primary responsibility for highlighting vulnerability at the earliest possible stage. However, one may argue that anybody coming into contact with an individual presenting as vulnerable has a level of

responsibility to draw attention to this at their earliest convenience (Plotnikoff & Woolfson, 2002, 2015).

### **Barriers in Accessing the Justice System**

It is well established that vulnerable people, either by virtue of their age, disability, mental capacity or other such factors are more likely than average to be victims of crime but less likely to achieve justice (Bull, 2013). It is pertinent to explore further why this is the case and to consider what barriers vulnerable people face when attempting to navigate the justice system. Broadly speaking, such barriers can be categorised as psychological and developmental challenges and difficulties coping with legal practitioners' methods (Powell, Mattison & McVilly, 2013). Despite the challenges faced by vulnerable people, if appropriate support is given, they can provide compelling and reliable witness testimony. Often, the challenge is to overcome the outdated prejudice that vulnerable persons will give poorer quality evidence and to adapt practice accordingly (Bull, 2010; Hepner et al., 2015).

### **Suggestibility, Confabulation and Acquiescence**

Making the decision to report a crime as a victim or give information as a witness is an undertaking for any individual given the often time consuming and complex nature of prosecutions within the CJS. These challenges are amplified for those deemed vulnerable as the high demands of the legal system are often in conflict with these individuals' capabilities (Saywitz, 2002). Vulnerable people commonly have difficulty coping with interviews and questioning in court due to higher than average levels of suggestibility and confabulation (Murphy & Clare, 2006). However, vulnerable witnesses are no less accurate than typically developed witnesses but

suggestibility and confabulation are increased within this group when inappropriately questioned (Clare & Gudjonsson, 1995).

Suggestibility is the increased propensity to accept and act on the suggestion of others and although increased suggestibility is common amongst those considered vulnerable, not all vulnerable individuals will demonstrate equal suggestive influence, making detection difficult (Ceci, Crossman, Scullin, Gilstrap & Huffman, 2002). Higher levels of suggestibility have been found in very young children but results demonstrate that this can be mitigated with appropriate questioning (Memon et al., 2003). Lower levels of intelligence, decreased memory capacity, limited knowledge base, temperament, compliance and self-esteem can all increase suggestibility but this can and should be avoided with more appropriate questioning techniques (Ceci et al., 2002; Memon et al., 2003; Murphy & Clare, 2006).

Confabulation is a memory disturbance which leads to fabricated memory recall without the intention to deceive and as it is more common in vulnerable witnesses if inappropriately questioned, it can lead to calls that the witness is unsafe (Gudjonsson, 2006; Murphy & Clare, 2006). Memory, a complex interaction between encoding, storage and retrieval can be highly error prone and particularly in episodic memory retrieval, rich false memory can be commonplace for vulnerable people who need support to structure the context of retrieval to ensure accuracy (Loftus, Wolchover & Page, 2006; Ost, Scoboria, Grant & Pankhurst, 2016; Ward & Ornstein, 2002).

Acquiescence, the giving of tacit concurrence is overall more commonplace amongst witnesses and victims deemed vulnerable given their desire to please others, their deference to adult belief and authority figures and their increased submissiveness

(Finlay & Lyons, 2002; Saywitz, 2002). Acquiescence also increases for vulnerable people in certain social settings, particularly if they are feeling disempowered or they feel a need to provide agreement due to exaggerated authority or displayed stereotypes (Leichtman & Ceci, 1995; Memon et al., 2003). Vulnerable people can confuse clarifying meaning with making suggestion and this can worsen if context and environment are also misunderstood (LaRooy et al., 2016). Time, including temporal terms can be particularly difficult to grasp for those considered vulnerable and intensity of an event can often be confused with length (of time) of an event (LaRooy et al., 2016). Numerous other challenges could be detailed here given the individual differences and continuum of difficulties often displayed amongst those considered vulnerable. The scene is set nevertheless, that without appropriate adaptations and specialist support, vulnerable people will struggle and likely fail to put across their best evidence (Gudjonsson & Joyce, 2011).

### **Practitioner Behaviour and Conduct**

Assuming one can take into consideration all of the above in relation to psychological and developmental challenges, vulnerable people face yet another barrier in the form of navigating legal practitioner conduct. Lawyers, including Barristers, Solicitors and Solicitor Advocates are all trained and actively encouraged to use suggestive questioning (Henderson, 2015a, b, 2016). This is despite, or perhaps because such techniques including leading questions, use of complex vocabulary, multi part and tag questions are all likely to mislead and confuse witnesses, particularly those deemed vulnerable (Plotnikoff & Woolfson, 2015). Incorrect perceptions of vulnerable people as ‘unsafe witnesses’ are exacerbated by over reliance on complex language, repeated,

leading questions and embedded phrases which do not allow the vulnerable person to give their best evidence (Kebbell & Hatton, 1999; Murphy & Clare, 2006).

Lawyers' intentions are to persuade for the benefit of their own cause, not always to elucidate the most reliable information, and use of manipulative techniques is routine (Henderson, 2003). Use of such techniques with vulnerable witnesses can lead to changes in previously accurate accounts, higher levels of concurrence and in some circumstances, a retraction leaving the case without that witness testimony and the likelihood of achieving justice diminished (Plotnikoff & Woolfson, 2015). Lawyers will often refute their responsibility to ensure that they are understood but the assumption that the onus is on the witness to adapt as opposed to counsel is outmoded and unsafe (Henderson, Heffer & Kebbell, 2016).

Incomprehensible language is common place amongst legal practitioners, particularly during cross examination as is an imposing manner which has shown to impact witness recall, particularly in the vulnerable (Bull & Corran, 2002; Henderson et al., 2016; Memon et al., 2003; Paterson, Bull & Vrij, 2002). Children are particularly susceptible to such practitioner's technique with inappropriate language used as a valuable strategic resource to radically reduce accuracy in their evidence (Perry et al., 2001). Evaluation of court transcripts has shown that developmentally sensitive questioning is a rarity as is the practice of ensuring questions are understood via clarification seeking, a must to avoid mere compliance (Kebbell, Hatton & Johnson, 2004; Zajac, Julien, Gross & Hayne, 2006).

There is a growing need to recognise and value children's testimony as they are often the only eyewitness to some of the most abhorrent domestic criminal offences and

age alone does not determine ability to provide reliable evidence (Bruck, Ceci & Hembrooke, 2001; Henderson, 2003; Kapardis, 2005; Marchant, 2013; Salmon, 2001). Despite this, practitioners demonstrate little awareness of how children can be vulnerable to errors of omission and commission due to techniques commonly employed such as the introduction of expectation, particularly from authority figures (Bruck & Ceci, 1995; Hargreaves & Cooper, 2015). Theory of mind is still developing in very young children and therefore their ability to understand how others may interpret a situation is limited (Marchant, 2013). Cross examination can be very challenging due to this incapacity as they cannot understand that others may not know what they themselves know and underestimate the need to share their experiences (Marchant, 2013). Cross examination style questioning for young child witnesses has proven inappropriate, resulting in changes made irrespective of original accuracy (Zajac & Hayne, 2003).

Calls for radical reform in this area have to date remained unheard but this may be more plausible in the future given slowly changing attitudes within the legal profession (Agnew, 2006; Henderson, 2015a, b, 2016). Research highlights the importance of recognising vulnerabilities, adapting practice and providing appropriate support accordingly (Gudjonsson & Joyce, 2011). Practitioners may acknowledge the need to modify practice and for specific training in how to adapt their techniques to working with vulnerable people but often not to the extent that there are any proactive calls for training from the profession or practical changes in their working conventions (Charles, 2012; Henderson, 2003; Togher, Balandin, Young, Given & Canty, 2006).

### **Appropriate Practice with Vulnerable People**

Each vulnerable person who comes into contact with the justice system should be assessed to ascertain their individual support needs; however, there are commonalities found amongst the challenges faced by those considered vulnerable. Research over the last 30 years has demonstrated that vulnerable people can provide compelling and reliable evidence and that much of this is determined by the legal professionals' ability to take responsibility for becoming competent communicators with vulnerable people (Ericson et al., 1994). Cognitive, physical and other impairments are not insurmountable and many of the challenges highlighted above can be overcome with the appropriate adaptations and recourse to suggested questioning techniques that allow vulnerable people the opportunity to give their best evidence (Hepner et al., 2015).

Practitioners should use short, simple questions and clarify understanding throughout by asking the vulnerable person to give their grasp of the question and response in their own words (LaRooy et al., 2016). Avoidance of abstract concepts and double negatives should be customary and questions requiring a yes or no answer should be used cautiously to avoid increased acquiescence (Milne & Bull, 2001). Developmentally appropriate language should be utilised, guided by the vocabulary of the vulnerable person (La Rooy et al., 2016). Context and environment should also be considered alongside spoken word, particularly when working with young children (LaRooy et al., 2016). Practitioners should also be made aware that questioner manner can impact witness confidence and recall ability therefore every effort should be made to build rapport prior to questioning in order to avoid exaggerating authoritative

stereotypes (Bull & Corran, 2002; Dando, Geiselman, MacLeod & Griffiths, 2016; Paterson et al., 2002).

There is a clear need to identify methods and techniques that will enhance vulnerable peoples' capabilities and although there has been some criticism of the limited research into how best to assist vulnerable people, use of communication aids has been well supported (Bull, 2013; Pipe, Salmon & Priestley, 2002; Saywitz, 2002). Many of the challenges outlined above can be overcome by providing contextual cues and making careful use of communication aids to assist recall (Kapardis, 2005). Increasing recall ability can be achieved with vulnerable witnesses with the use of drawing and writing, use of props including body diagrams and event/topic cards and support to reinstate event and environment context (Mattison, 2016). However, these techniques must be carried out carefully, by trained professionals to ensure accuracy is not compromised (Brown, 2011; Pipe et al., 2002; Mattison, 2016). Props can provide retrieval cues and increase the attention given to memory recall; they can also compensate for any language difficulties and provide a welcome distraction, particularly for young children from the interviewer, who can directly or inadvertently impact witness recall (Salmon, 2001).

Real props, from the incident are most useful in aiding recall but drawing and re-enactment can also be helpful; calming objects such as stress balls can relieve anxiety and maintain concentration (Mattison, 2016; Salmon, 2011). Use of toys and dolls, particularly anatomically detailed dolls has long since been controversial as children's behaviour with such props can be changeable and there are no clear guidelines as to their design and use which can lead to inappropriately suggestive practices (Plotnikoff & Woolfson, 2015; Poole & Bruck, 2012; Wakefield & Underwager, 2003). Despite



this, with careful and trained practitioner use, dolls can be a valuable tool for aiding communication under difficult circumstances, "...not as a litmus test for sexual abuse... [tool use can be valuable] but contingent upon the skill of the user" (Boat & Everson, 1993, p. 65). It is suggested that anatomically detailed dolls should only be used after disclosure to clarify detail, not to obtain initial disclosure and their use is not encouraged with very young children (Bruck & Ceci, 1995; Ceci et al., 2002; Kapardis, 2005; Poole & Bruck, 2012). Pertinently, any prop used to aid communication should be utilised carefully, by trained practitioners and interpretation from any actions observed needs to be particularly cautious given the increased risk of inaccuracies (Pipe et al., 2002).

Despite this, and an ongoing need to develop new techniques, much is now understood and written about aiding the process of vulnerable persons giving evidence and suggestions now focus on shifting target from questionee competence to questioner competence (Milne & Bull, 2001; Wrightsman, Nietzel & Fortune, 1998). Enabling the vulnerable to give their best evidence is crucial given the impact for jurors and decision makers (Bell & Loftus, 1989). Research suggests that lawyers overall are unaware of the constructive findings of psychological research and have very little regard for related academic literature (Bull, 2010). They tend to adhere to older, stereotypical notions of vulnerable witnesses and have little interest in the burgeoning psychological knowledge about how to overcome challenges when working with vulnerable people (Carson & Bull, 2003; Henderson, 2003). This is particularly worrisome given the disparate nature of legislative guidance and practice direction available to lawyers.

## **Legislative Change**

Recognition of the challenges faced by vulnerable people in the justice system has only been prevalent within psychological research for the last 30 years (Bull, 2010; Memon et al., 2003). It is unsurprising therefore that the legislature were also lackadaisical in formally recognising the needs of vulnerable persons encountering the system. Initial murmurings were followed by a clear recommendation in the Pigot Report, that for cases involving violent and sexual offence, all children's evidence should be taken pre-trial (Home Office, 1989). Following on, a few quiet calls for reform were made but it wasn't until the Home Office produced their Speaking up for Justice report in 1989, that clear recommendations (78 in total) were made on how to improve access to the CJS for vulnerable witnesses. This report introduced the notion of special measures to assist vulnerable persons whilst in contact with the justice system and was shortly followed by the formal introduction of special measures by means of the Youth Justice and Criminal Evidence Act 1999 (YJCEA).

As noted earlier, Section 16(a) of the YJCEA provides vulnerable witness eligibility for the assistance of a special measures direction. Special measures available once an individual is deemed vulnerable include screens (section.23), use of live link (s.24), evidence given in private (s.25 – only in sexual offences cases and cases involving witness intimidation), removal of wigs and/or gowns (s.26), video recorded interviews (s.27), video recorded cross examination (s.28 – not yet implemented), use of an intermediary (s.29) and aids to communication (s.30) (YJCEA, 1999). Special measures, as outlined in the YJCEA 1999 provide a solid foundation for improved communication and questioning of the vulnerable in the court setting, so long as special measures directions are made in a timely fashion and lawyers and other legal personnel

recognise their utility (Mattison, 2016). If used appropriately, special measures can achieve best evidence for the court and alleviate stress and inconvenience for vulnerable witnesses (Mitchels, 2016). The role of the intermediary, provided by s.29 YJCEA has been considered as having the greatest potential for increasing the presence of vulnerable people within the justice system by directly aiding their communication needs (Plotnikoff & Woolfson, 2015).

### **Intermediaries**

A brief history of the role dates back to 1987 when initial propositions were made for specific ‘child examiners’ to act as interpreter between vulnerable children and lawyers, in light of the ‘legalese’ often used in the court system (Williams, 1987 as cited in Plotnikoff & Woolfson, 2015). These recommendations were considered and reproduced in the Pigot Report but with very limited scope (Home Office, 1989). Further recommendations were made for powers to order intermediary assistance (Home Office, 1998) but it was only by means of the Youth Justice and Criminal Evidence that the role was brought to fruition (Section 29, YJCEA, 1999).

Intermediaries are recruited to facilitate communication, not to assess or comment on competency; rather to ensure the vulnerable witness is able to comprehend any question asked of them and to ensure any persons asking such questions are able to clearly understand what the witness communicates in return (Plotnikoff & Woolfson, 2015). Impartial and with a duty to the court, intermediaries are not to be confused with supporters nor expert witnesses (Plotnikoff & Woolfson, 2015). Tasks that can be asked of intermediaries are to assist police in communicating with witnesses, to assist in pre-trial arrangements including providing communication support during court

familiarisation visits and assisting communication during the trial process (O'Mahony, 2010). Once a referral is made for an intermediary and a match is achieved based on skill set and location, a full assessment of the individual's communication needs is made (O'Mahony, 2010). This is to include liaison with external agencies and key personnel who have regular contact with the vulnerable person. When an intermediary is requested to support a witness' communication needs in court, they will accompany the vulnerable person into the witness box or separate live link room and facilitate communication between all parties, intervening if set ground rules are not adhered to (O'Mahony, 2010).

No specification was made in legislation as to who could perform the role of intermediary and therefore the Home Office responded by recruiting a cohort of skilled intermediaries with registration subject to successful completion of a 5 day training course (Plontikoff & Woolfson, 2015). Intermediaries are recruited for their specialist knowledge of communication and individuals will often demonstrate specialism in areas such as speech and language, cognitive impairment and communication needs. Recruitment is also dependent on individual self-assurance and confidence to defend recommendations in the challenging court environment (O'Mahony, 2010). The training emphasises and teaches the rules of evidence, court procedures and the role and function of an intermediary in the CJS as this will be new and much needed knowledge for most recruits (O'Mahony, 2010; Registered Intermediary Procedural Guidance Manual, 2015).

As of 2014/2015, there were 98 Registered Intermediaries in England and Wales with most over 40 years old and self-employed on a part time basis as Registered Intermediaries (O'Mahony, Marchant & Fadden, 2016; Plotnikoff & Woolfson, 2015).

Almost all requests originate from the Police and Crown Prosecution Service (CPS) with almost all requests made for complainants either aged less than 18 years old or adults with learning disabilities (Plotnikoff & Woolfson, 2015). Although publicity around intermediaries is growing, a suggestion is made that there needs to be far greater awareness of the scheme in order that early identification of those who would benefit from intermediary intervention can be achieved as often as possible (O'Mahony, 2010).

Of note, the YJCEA specifically excluded vulnerable defendants and therefore they do not fall eligible for the support of a Registered Intermediary (1999). The courts do have an inherent power to appoint a non-registered intermediary in these circumstances but this is usually haphazard and unfortunately, often led entirely by cost (CPD 2015; Mitchels, 2016). Professionals working in the field are largely of the opinion that the scheme should extend to vulnerable defendants given the well-known cognitive difficulties experienced by many vulnerable people in the CJS, whether victim or accused (Department of Health, 2008; Mattison, 2015; Milne & Bull, 2006; O'Mahony, 2010; O'Mahony, Creaton, Smith & Milne, 2016; Plotnikoff & Woolfson, 2015).

Following the successful roll out of the intermediary scheme in the UK, Australia recognised the utility of such a scheme and in November 2015, they also introduced a witness intermediary scheme (pilot scheme to run from 31 March 2016 – 31 March 2019). The scheme is very similar to that in the UK with Sections 88-90 of the Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Act 2015 stating –

A person appointed as a children's champion (who may also be called a witness intermediary) for a witness is:

- to communicate and explain: to the witness, questions put to the witness, and to any person asking such a question, the answers given by the witness in replying to them, and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.
- A Children's champion for a witness is an officer of the Court and has a duty to impartially facilitate the communication of, and with, the witness so the witness can provide the witness's best evidence.

Eligibility is different under the Australian scheme; intermediaries are appointed for children under 16 years of age or persons aged over 16 if the courts is satisfied "...that the witness has difficulty communicating" (S.89 Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Act 2015). The court is also given wider discretion to state that an intermediary's input is not available, appropriate or suitable in the administration of justice. Recruitment, selection and training for the witness intermediary pilot scheme in Australia is as that detailed above in the UK.

### **Case Law and The Advocate's Gateway**

The introduction of special measures, particularly the intermediary role heralded huge legislative change, but in practice very little changed until bold reform, from the courts themselves in 2010 (Cooke & Davies, 2001; Henderson, 2015). In *R v Barker* ([2010] EWCA Crim 4), the provisions of the YJCEA 1999 were upheld by the Court of Appeal and the judgement, in allowing the evidence of a 4 year old child emphasised

that there was no longer any age only presumptions in relation to vulnerable witness testimony. This case was followed by a series of similar watershed cases heard at the Court of Appeal concerning vulnerable witnesses and victims whereby a clear juncture could be seen in attitude and provision of support for the vulnerable, particularly in relation to intermediary appointment (*R v W and M* ([2010] EWCA Crim 1926; *R v Edwards* ([2011] EWCA Crim 3028; *R v Farooqi* ([2013] EWCA Crim 1649).

The impact of these Court of Appeal decisions was the introduction of Criminal Practice Direction (CPD) (2015), of which part 18 provides guidance on measures to assist a vulnerable witness or defendant to give evidence, with emphasis on the intermediary role. Although the CPD provides general guidance to lawyers as to how best to assist vulnerable people, some suggestion has been made that it is lacking in the more specific details needed to capaciously support the vulnerable, particularly in relation to use of communication aids (Mattison, 2016). Of course, this is alongside the widely unsatisfactory case that lawyers need not undergo any specialist training with regard to working with vulnerable people. Although the Bar has now recognised this need and established an interdisciplinary group to trial pilot training events, current progress is piecemeal and tardy (Cashmore, 2002; Judiciary of England and Wales, 2015; Plotnikoff & Woolfson, 2015; Togher et al., 2006).

In 2011, the Advocacy Training Council (now the Inns of Court College of Advocacy, ICCA) produced their landmark report, *Raising the Bar* which acknowledged the monumental legislative and case law reform in relation to vulnerable people within the CJS. However, the report also highlighted the perpetuating problems of involving vulnerable people in the justice system, the considerable benefits that specialist training would provide and the need for recognising that working with

vulnerable people is a specialist skill (Advocacy Training Council, 2011). Recommendations were made in the report for specialist training across the board and a ticketing system to ensure a high quality threshold. In acknowledging communication with vulnerable people as a specialist skill, the report made recommendations for toolkits, covering key topic areas with guidance and support, aimed at lawyers and other legal professionals, including intermediaries (Advocacy Training Council, 2011).

Following a successful demonstration website, The Advocate's Gateway (TAG) was launched in 2013, with a number of toolkits covering topic areas such as young witnesses/defendants, case management, autism and learning difficulties. The toolkits brought together relevant psychological research and learning, case law precedent, and empirical research findings (The Advocate's Gateway, 2013). Toolkits provided a basic level of information and users were made very aware that their use does not replace the role of an intermediary who can provide an individualised, communication needs assessment. Since inception in 2013, several new toolkits have been added as have numerous other resources, including training materials and relevant articles and reports.

The toolkits have been very well received and Criminal Practice Direction (2015) describes their use as 'best practice' with a recommendation that all judges and lawyers make regular and thorough use of them (Plotnikoff & Woolfson, 2015). Backing has also been received by the current and previous Lord Chief Justice, the judiciary and in the Leveson report (Review of Efficiency in Criminal Proceedings), with calls for further expansion "to encompass as many areas of criminal practice as practicable" (R v Lubemba, R v JP [2014] EWCA Crim 2064; p. 237, 2015). Despite this, there has been very little research to explore practitioners' perceptions of the toolkits. Some tentative suggestion has been made that some practitioners are finding



the toolkits helpful but equally some suggestions have been made that judicial direction and signposting to the toolkits is being overlooked by lawyers (Henderson, 2015a, b; Plotnikoff & Woolfson, 2015).

### **Present Study**

Entering the CJS as a witness or victim to a crime is a huge undertaking, amplified when a vulnerable person, either by virtue of their young age, disability, learning difficulty, mental health condition or other such factors attempts to seek justice in this way (Saywitz, 2002). Research has clearly identified the developmental and psychological challenges faced by those deemed vulnerable in accessing the CJS including increased suggestibility, confabulation and acquiescence, if appropriate adaptations are not made (Finlay & Lyons, 2002; Gudjonsson, 2006; Memon et al., 2003). Research has also highlighted the proliferation of inappropriate practice and underwhelming levels of adaptation when questioning vulnerable people, who are not psychologically and physiologically capable of coping with such techniques (Ewin, 2015). Despite landmark legislative change and clear calls for reform from within the judiciary, it is suggested that lawyers may still be unaware of the need to adapt and have recourse to the proliferation of resources now available to them (Henderson, 2015, 2016). However, since the advent of the role of intermediary, it is posited that intermediaries demonstrate a far wider understanding of what makes somebody vulnerable and how to overcome the challenges faced by vulnerable people when in contact with the CJS. It is also suggested that intermediaries, with their backgrounds in understanding and facilitating communication, have frequent recourse to relevant research and practitioner guidance. This work hopes to thoroughly consider the current state of affairs in relation to recognition of the challenges faced by vulnerable people

and whether the resources available are utilised (Bull, 2010; Henderson, 2015, 2016).

The following hypotheses were offered in this work –

1. Intermediaries will demonstrate understanding of the vulnerabilities that characterise vulnerable people when in contact with the justice system.
2. Intermediaries' who have worked with a higher number of vulnerable people will demonstrate increased self confidence in meeting the needs of vulnerable people.
3. Intermediaries' who regularly refer to pertinent research, guidance and resources on The Advocate's Gateway, will demonstrate higher levels of confidence in working with vulnerable people.

## **Method**

### **Participants**

Participants were Intermediaries in the UK and Australia, and other practitioners including a Social Worker and a Senior Manager. Opportunity sampling was used to source participants for this work. Participants were considered suitable for involvement in this study due to their experiences in the Criminal Justice System (CJS); increasing their potential awareness of the challenges faced by vulnerable persons and the associated resources, aids and support available in accessing the justice system for this special group. Participants were invited to take part in the survey via an email invitation that was disseminated to Advocacy Training Council (ATC) members, now known as the Inns of Court College of Advocacy (ICCA) (Appendix A). The sample worked in both the UK and Australia. Participants were informed of the aims and purpose of the study and their confidentiality and voluntary participation were reiterated (Appendix B).

Ethical approval was given by the University of Chester Psychology Department Ethics Committee (Appendices C and D). Participants were treated in accordance with the ethical guidelines of the British Psychological Society.

### **Measures and Procedure**

A survey was designed by the researcher for use in this work based upon a thorough and detailed literature review and evaluation of empirical evidence in the chosen topic area (Appendix E). The structure of the survey was guided by the aims and purposes of this research and comprised three main sections. Open and closed questions were included in the survey to allow for collection of qualitative and quantitative data making this work of mixed methods design.

The three sections of the survey were as follows –

**Section A: About you and your work.** The first section of the survey explored the respondents' work history and levels of experience and understanding in working with vulnerable people. Respondents were asked what their current role in the justice system was followed by how long they have held that position. Respondents were questioned on what area of law formulates the majority of their work and what region and country they hold their current role given the international nature of this work. In addition, respondents were asked as an open question, to elicit breadth of response, what they consider as characteristics that would alert them to possible vulnerabilities in those individuals that they work with. Moreover, respondents were questioned on how many vulnerable people they have worked with in the last 12 months. Finally, respondents were questioned as to whether they have attended any training on how to

work effectively with vulnerable people in their role and how confident they would rate their own ability in meeting the needs of vulnerable people in accessing the CJS.

**Section B: Working with vulnerable people in the justice system.** This section of the survey focused on the respondents own perceptions and experiences of access for those considered vulnerable into the justice system. Respondents were asked who they would consider responsible for identifying those deemed vulnerable within the CJS, with key agencies including the police, CPS and defence counsel included for consideration. Respondents were asked for their professional experience of what challenges vulnerable people face in accessing the CJS and then for whether or not they have worked alongside an Intermediary, one of the special measures available to vulnerable witnesses. This question was followed by how effective they consider use of an Intermediary in aiding communication and respondents were asked to comment on their use and effectiveness of various communication aids including drawing, dolls, body diagrams and computer/alternative systems. To conclude this section, respondents were asked to indicate on a Likert scale of 1-5, with 1=Never and 5=Always, how often they read academic research articles about vulnerable people and their experiences of the CJS.

**Section C: The Advocate's Gateway.** The third section of the survey questioned respondents on their knowledge of The Advocate's Gateway (TAG), a free web based resource providing access to practical, evidence-based guidance on vulnerable witnesses and defendant to practitioners in the CJS. Respondents were asked whether they were aware of TAG and if so, how they had heard about the resource. Respondents were then asked how often they have made use of the toolkits available on TAG and how often they have made reference to them in their work. In order to

evaluate the usefulness of the toolkits on TAG, respondents were asked to indicate those toolkits most useful and least useful to them in their current role before providing feedback on any events attended as organised by the ICCA, hosts to TAG.

Respondents were then asked if they have made use of additional resources available on TAG and they were then asked to indicate, using a 7 point Likert scale with 1=Not at all, 7=Very much, how much they feel TAG has increased their knowledge and ability to work with vulnerable people in the CJS. In order to adapt to meet identified needs, respondents were asked to indicate topic areas for possible future toolkits that would be of benefit to them in their current roles, and by means of open questions, respondents were asked what they find most and least useful about TAG. Respondents were asked to give further suggestion as to how TAG could evolve to support them in their roles working with vulnerable people, whether they would recommend TAG and to close, respondents were given the opportunity to list any other resources that they use and find effective in working with vulnerable people.

Participants were emailed an invitation detailing the research with a link to access the survey should they choose to take part in the work (Appendices A and B). Once the survey was completed, the participants were directed to the debriefing sheet which thanked them for taking part in the research, outlined what the data would be utilised for, reiterated anonymity of participation and provided them with contact details and details of support agencies should they feel the need for additional support post participation (Appendix F).

## **Design and Analysis**

Data preparation was conducted once all survey responses had been received and reviewed. Partially completed surveys were analysed as far as practicable in order to maximise data and ensure participant's time and efforts were reflected in the work. Preparation included transferring data responses to Microsoft Excel and then coding as appropriate prior to transferring all data to IBM SPSS for further analyses; all SPSS output is contained within Appendix G. Given the mixed methods design of this work, questions producing quantitative data were first subject to descriptive statistical analysis producing frequencies, and means and standard deviations where appropriate. This was followed by inferential, non-parametric statistical techniques given the primary use of ordinal scales in this work. These included a series of Spearman Rank Order Correlations, Mann Whitney U tests and a Kruskal-Wallis H test.

Questions producing qualitative data were subject to inductive content analysis, from a symbolic interactionist perspective given its effectiveness alongside quantitative methods (Banister, 2011; Wood, Giles & Percy, 2009). Coding categories were formulated from open ended responses received from respondents; 3 survey responses were taken to formulate initial categories and then further responses were coded as appropriate with additional categories added as and when required (Coolican, 2014; Elo & Kyngas, 2008).

## **Results**

### **Sample Details**

Respondents to the survey numbered 20 in total ( $n=20$ ) and 18 (90%) of these described their current role as an Intermediary. One respondent (5%) described their

role as a Senior Manager within the Witness Service and one respondent (5%) described their role as a Social Worker. Respondents had been in their current role for an average of 1.5 years, with 3 months as the newest in role and 10 years as the longest established in role ( $M = 1.68$ ,  $SD = 2.71$ ). Eighteen respondents (90%) worked in the area of Criminal law, six respondents (30%) worked in Family law and one respondent (5%) worked in Civil law. Respondents came from the UK and Australia, with nine respondents (45%) working in the UK and 11 respondents (55%) working in Australia.

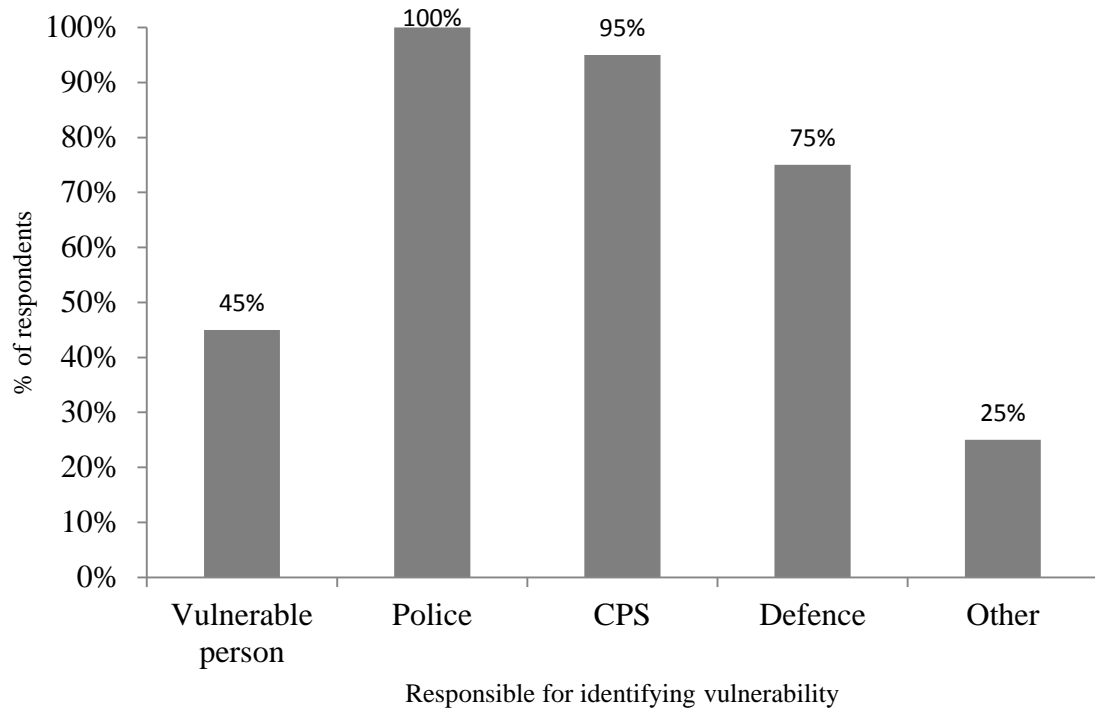
### **Identifying vulnerability**

All 20 respondents (100%) were able to identify some of the key characteristics that make a person vulnerable in the Criminal Justice System (CJS). Responses were coded by means of inductive content analysis into seven categories. Sixteen respondents (80%) highlighted how age can increase vulnerability in the justice system whilst 19 respondents (95%) highlighted the impact disability and learning difficulties can have for an individual. One respondent explained how "...judges/barristers with little to no sympathy," for young age or disability can exasperate the issue. Six respondents (30%) were able to identify both cognitive impairment(s) and trauma, both distinct categories as key characteristics for increased vulnerability and 11 respondents (55%) highlighted the impact socio-economic factors can have in increasing vulnerability. For example, one respondent commented on the impact of "exposure to complex trauma," whilst another respondent highlighted "social disadvantage" as a key factor in increased vulnerability. Nine respondents (45%) reported that limited language and communication skills can impede access in the justice system and nine respondents (45%) also highlighted the effect of poor mental health on increasing vulnerability.

## VULNERABLE PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

Respondents were asked to select those primary practitioners within the justice system whom they feel have responsibility for identifying vulnerability in individuals.

Results are shown below in Figure 1.



*Figure 1.* Intermediaries' percentage response rate for practitioners who are responsible for identifying vulnerability

All respondents stated that the police are responsible for identifying vulnerability and almost all respondents felt the CPS too was responsible for highlighting vulnerabilities. Most respondents acknowledged the role the defence counsel need to play in identifying potential vulnerability but only half of the respondents stated that the vulnerable person themselves have a responsibility to explain any possible vulnerabilities. Some respondents felt others were also responsible for identifying vulnerabilities and these included children's guardians, family members,



external support services and more broadly, anybody involved in the case that could reasonably be expected to identify potential vulnerability.

Respondents were asked what challenges they feel that vulnerable people face within the justice system and 18 (90%) of respondents were able to identify some of the key challenges faced by vulnerable people. Responses were coded by means of inductive content analysis into seven categories. Fourteen respondents (70%) talked about the challenges faced due to inappropriate language style and questioning techniques. For example, one respondent talked of “lack of understanding of legal terms,” whilst another respondent made reference to “the language and questioning used is not used in everyday life.” Ten respondents (50%) highlighted the challenges faced by vulnerable people in understanding the process and context of the justice system, such as “dated system, set in its ways,” and “the legal system is not vulnerable user friendly.” Three respondents (15%) commented on how understanding consequence can be very challenging for vulnerable people whilst three respondents (15%) also brought attention to communication difficulties for vulnerable people in the justice system. Four respondents (20%) highlighted how managing emotion, feelings and stress can be particularly problematic for vulnerable people, for example “managing stress, anxiety, shame and embarrassment.” Three respondents (15%) stressed the challenge of time delays in the justice system particularly difficult for vulnerable people. Five respondents (25%) claimed that vulnerable people will often chose not to highlight their additional needs and therefore “they are likely to refuse assistance, or not be aware that assistance is available there for them,” and “participate in a way that is not safe or equal.”

### Intermediary Experience and Confidence Levels

Respondents were asked how many vulnerable people they had worked with in the last 12 months. The average number of vulnerable people that the respondents had worked with was seven ( $M = 6.78$ ,  $SD = 7.97$ ). One respondent, who described their current role as in senior management responded that they had worked with over 200 vulnerable people in the last 12 months. This response was excluded from the mean number of seven given how much higher it was than any other response. Eighteen respondents (90%) stated that they had completed some form of training in relation to working with vulnerable people. Seventeen respondents (85%) had completed the 5 day training programme to become an intermediary whilst others had completed additional training in line with their additional roles such as “safeguarding training,” “neurobiology of trauma,” “ASPECT training” and “Attachment disorder training.” Respondents were asked to report how confident they felt in meeting the needs of vulnerable people in their current role. Three respondents (15%) reported feeling very confident in meeting these needs, whilst six respondents (30%) felt confident in their role. Eight respondents (40%) reported feeling mostly confident in meeting the needs of vulnerable people whilst the remaining three respondents (15%) reported average levels of confidence in their abilities.

In order to explore the data in more depth, Spearman’s rank order correlation was conducted to explore the relationship between the number of vulnerable persons worked with and confidence levels in respondents’ current role. Preliminary analyses were performed to ensure no violations of the assumptions for Spearman’s rank order correlation. There was a strong, positive correlation between the two variables,  $\rho = .57$ ,  $n = 18$ ,  $p = .014$ , with increased number of vulnerable people worked with

associated with higher levels of self-reported confidence in current role. A Mann-Whitney U test was also conducted to explore whether confidence levels varied between country of work, Australia and UK. Although UK professionals reported higher levels of confidence overall, there was no significant difference in confidence level for UK professionals ( $Md = 6, n = 9$ ) and Australian professionals ( $Md = 5, n = 10$ );  $U = 25.5$ ,  $z = -1.69, p = .09, r = .38$ .

To explore the concept of confidence in more depth, a one-way between-groups analysis of variance (Kruskal-Wallis) was conducted to explore if there is an effect on confidence levels dependent on length of time held in current role. Respondents were divided into three groups according to their length of time in role (Group 1: 0-4 months; Group 2: 4-8 months; Group 3: 8 months and above). Although confidence levels did raise with increased length of time in role, a Kruskal-Wallis test revealed no significant effect of confidence levels across the three different groups (Gp1,  $n = 7$ , Gp2,  $n = 6$ , Gp3,  $n = 6$ ),  $\chi^2(2, n = 19) = 3.76, p = .15$ . Given no significant effect, no post hoc tests were conducted. Comments made by respondents alongside their confidence ratings included "...entirely depends on each person I meet and assess," "I'm still learning my way around the justice system," "...reliant on the flexibility of the justice system," and "...some individuals can cause substantial difficulties in helping themselves."

### **Communication Aids**

Nineteen respondents (95%) reported that they had used communication aids in their work when working with vulnerable people. Respondents were asked to comment on the effectiveness of four main communication aids including drawing, use of body diagrams, use of dolls and use of alternative communication systems, if they had

experience of using such aids. Table 1 displays respondents' perceived effectiveness of communication aids in their work and total percentage response rates to demonstrate that not all respondents had used all communication aids. Pertinently, computer and alternative systems such as eye tracking devices are usually only utilised when part of everyday functioning for an individual and therefore, this may account for the relatively low response to this question and why effectiveness has not been explored further for this aid.

Table 1. *Intermediaries' perceived effectiveness of communication aids in their work*

Rating 1-7	Not effective at all (1)	Minimally effective (2)	Somewhat effective (3)	Average effectiveness (4)	Mostly effective (5)	Effective (6)	Very effective (7)	Total %
	<i>N</i> %	<i>N</i> %	<i>N</i> %	<i>N</i> %	<i>N</i> %	<i>N</i> %	<i>N</i> %	<i>N</i> %
Drawing	0 (0%)	1 (5%)	1 (5%)	1 (5%)	4 (20%)	5 (25%)	7 (35%)	19 (95%)
Body diagrams	0 (0%)	0 (0%)	0 (0%)	3 (15%)	6 (30%)	3 (15%)	7 (35%)	19 (95%)
Dolls	0 (0%)	2 (10%)	1 (5%)	4 (20%)	1 (5%)	1 (5%)	3 (15%)	12 (60%)
Computer/ Alternative Systems	0 (0%)	0 (0%)	2 (10%)	1 (5%)	1 (5%)	0 (0%)	1 (5%)	5 (25%)

Drawing and body diagrams were considered the most effective communication aids amongst the sample whilst use of dolls demonstrated a mixed response; computer and alternative systems had been used by only a quarter of the respondents and considered of average effectiveness overall. Respondents were asked how often they

read academic literature and research about vulnerable people and their experiences in the justice system. Four respondents (20%) said they rarely read such research, 12 respondents (60%) said they have recourse to literature often, two respondents (10%) said they almost always read such literature and two respondents (10%) claimed to always read relevant literature. Much academic literature in this area centres on appropriate use of communication aids to support vulnerable people and therefore, further analyses were conducted to explore the potential correlations between recourse to academic literature and effectiveness of individual communication aids. Results are shown below in Table 2.

Table 2. *Spearman Rank Order Correlation – Reading academic literature reading and effectiveness of communication aids*

	Academic Literature	Effectiveness-Drawing	Effectiveness-Body Diagrams	Effectiveness-Dolls
Academic Literature	1	-	-	-
Effectiveness-Drawing	.116	-	-	-
Effectiveness-Body Diagrams	.228	.524*	-	-
Effectiveness-Dolls	-.037	.720**	.330	-

*Note* – Correlation is significant at the 0.05 level - \*.  
Correlation is significant at the 0.01 level - \*\*.  
In this study, 0.01 will be used as  $\alpha$  level.

Results show only a small, positive correlation between recourse to academic literature and increased effectiveness of use of drawing and body diagrams. There was a

weak, negative correlation between recourse to academic literature and effectiveness of use of dolls when working with vulnerable people. There was medium to strong, positive correlation between the perceived effectiveness of one communication aid and perceived effectiveness of another communication aid.

In order to explore the data in more depth, Spearman's rank order correlation was conducted to explore the relationship between recourse to relevant academic literature and confidence levels in respondents' current role. Preliminary analyses were performed to ensure no violations of the assumptions for Spearman's rank order correlation. There was a weak, positive correlation between the two variables,  $\rho = .26$ ,  $n = 19$ ,  $p = .274$ , with increased recourse to academic literature associated with slightly higher levels of confidence within role. Given the diversity of region amongst the sample, a Mann-Whitney  $U$  test was conducted to see if recourse to academic literature varied between UK and Australian practitioners. A Mann-Whitney  $U$  test revealed a significant difference in the levels of recourse to academic literature of UK practitioners ( $Md = 3$ ,  $n = 9$ ) and Australian professionals ( $Md = 3$ ,  $n = 11$ );  $U = 25.5$ ,  $z = -2.07$ ,  $p = .04$ ,  $r = .46$ .

### **The Advocate's Gateway (TAG)**

One respondent (5%) had heard of TAG via word of mouth, one respondent (5%) was aware of TAG as they had contributed to its resources, three respondents (15%) had heard of TAG from an unregistered intermediary provider and two (10%) respondents had sourced TAG from their research programmes and further studies. Thirteen respondents (65%) had been informed of TAG during training, notably during the Intermediary training. Seventeen respondents (85%) had used the toolkits found on

TAG in their work with vulnerable people. Respondents were asked to comment on how often they reference the toolkits found on TAG in their work; responses are detailed below in Table 3.

Table 3. *Intermediaries' frequency of referencing TAG toolkits in their work*

		Never (1)	Rarely (2)	Often (3)	Almost Always (4)	Always (5)
Reference toolkits	TAG	1 (5%)	0 (0%)	9 (45%)	7 (35%)	2 (10%)

Overall, there was a high frequency of reference to the TAG toolkits amongst the respondents. In order to explore the data in more depth, Spearman's rank order correlation was conducted to explore the relationship between frequency of use of TAG toolkits and confidence levels in respondents' current role. Preliminary analyses were performed to ensure no violations of the assumptions for Spearman's rank order correlation. There was a medium strength, positive correlation between the two variables,  $\rho = .370$ ,  $n = 18$ ,  $p = .130$ , with increased frequency of use of TAG toolkits associated with slightly higher levels of confidence within role.

Fifteen respondents (75%) chose Toolkit 1 – Ground Rules Hearing and the fair treatment of vulnerable people in court, as the most useful toolkit whilst 12 respondents (60%) chose Toolkit 7 as the most useful - Additional factors concerning children under 7 (or functioning at a very young age). Three respondents (15%) chose Toolkit 17 - Vulnerable witnesses and parties in the civil courts as the least useful toolkit, whilst two respondents (10%) felt that Toolkit 13 - Vulnerable witnesses and parties in the family courts, was least useful to them in their role. Three respondents (15%) had attended a

TAG organised event and these included the TAG conference in 2015 and seminars on given topics such as application of “special measures.” Fifteen respondents (75%) had made use of the additional resources available on TAG, with the most used additional resources being Videos (60% respondents) and Articles (40% respondents). Respondents were asked to comment on how much TAG has increased their knowledge of the support needed by vulnerable people in the justice system. One respondent (5%) only felt TAG had improved their knowledge somewhat, two respondents (10%) chose an average amount of increased knowledge, one respondent (5%) claimed their knowledge to have been increased mostly, whilst five respondents (25%) felt their knowledge had been increased largely by their use of TAG. Nine respondents (45%) claimed that TAG had increased their knowledge of the support needed by vulnerable people very much.

To conclude, respondents were asked which topic areas would benefit from being included in future toolkits on TAG. Examples from respondents included “effective participation of vulnerable adult defendants,” “assessment tools for intermediaries,” “court procedures,” “trauma – how to help,” how to work with displays of “highly sexualised behaviour” and “alternative special measures.” Nineteen respondents (95%) would recommend use of the TAG website and toolkits to a colleague or professional in the field, with comments including “brilliant resource,” “relevant...up to date information,” and “it is the ‘go to’ handbook for anybody working with vulnerable people in the justice system”. Respondents were given the opportunity to comment on how TAG could improve and a number of respondents commented on the need to change the organisation, design and layout of the website with one respondent commenting “the structure could be more helpful.” Respondents



also suggested the need for “more training resources” and shorter “quick guides” alongside the original TAG toolkits.

### **Discussion**

This study is one of very few to explore intermediaries’ understanding of the needs of the vulnerable within the justice system and to explore their recourse to available resources and the resulting impact on their practice.

The following three hypotheses were offered in this work –

1. Intermediaries will demonstrate understanding of the vulnerabilities that characterise vulnerable people when in contact with the justice system.
2. Intermediaries’ who have worked with a higher number of vulnerable people will demonstrate increased self confidence in meeting the needs of vulnerable people.
3. Intermediaries’ who regularly refer to pertinent research, guidance and resources on The Advocate’s Gateway (TAG), will demonstrate higher levels of confidence in working with vulnerable people.

The study found that intermediaries, overall were aware of the needs of vulnerable people coming into contact with the justice system and utilised guidance and resources effectively, therefore hypothesis 1 is supported. Hypothesis 2 is also supported given that intermediaries’ confidence levels were higher when associated with increased number of vulnerable people worked with in the justice system. Hypothesis 3 cannot be fully supported as although confidence levels increased in association with increased recourse to academic literature and higher frequency of use of TAG toolkits, these results were not significant.

## **Findings**

The response to the survey was limited and respondents were almost exclusively intermediaries, which although provides further insight into the profession, allows very little generalisability to the wider legal practitioners' experience. Intermediaries were predominantly new in role; to be expected given that the role of intermediary has only been in place since 2008 in the UK and since last year in Australia (YJCEA, 1999; Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Act 2015). Intermediaries were mostly criminal practitioners with few working in the civil and family arenas and intermediaries worked in both the UK and Australia demonstrating that practitioners in Australia are engaging well with guidance, resources and research early in the lifespan of the intermediary role within their justice system (52 intermediaries are currently registered within the pilot scheme in New South Wales).

In terms of vulnerability, all intermediaries were able to identify key characteristics that make a person vulnerable within the justice system. Again, this is unsurprising given that intermediaries are recruited to role specifically for their previous experience, knowledge and understanding of the characteristics that increase vulnerability and how to aid and enhance communication in such circumstances (O'Mahony, 2010; Plotnikoff & Woolfson, 2015). The most noted characteristic for increased vulnerability was being young of age. This may be as a result that the majority of referrals for intermediary input are for children and young people aged less than 18 years and that broadening the scope of the intermediary role to adequately encompass all those deemed vulnerable, particularly vulnerable adults is an ongoing challenge (Cooper & Wurtzel, 2014). Some intermediaries chose to use this question response to highlight bad practice in relation to acknowledging vulnerability. For

example, one respondent commented “practitioners offering a distinct lack of support despite it being obviously needed,” which may highlight the widely held belief that mandatory training for lawyers working with the vulnerable is imperative (Henderson, 2015a).

In terms of recognising vulnerability, most intermediaries were able to highlight the role of the police and CPS in ensuring vulnerabilities are exposed which is expected given the clear explanations of this requirement in the Registered Intermediary Procedural Guidance Manual (2015). A finding that contradicts some earlier research is that almost half of the intermediaries felt that vulnerable people themselves have a certain level of responsibility for highlighting their own vulnerabilities (Burton, Evans & Sanders, 2006). This may be explained by the intermediaries’ increased knowledge and understanding of some lesser known causes of vulnerability such as mild learning difficulty and hidden physical disabilities where it may be reasonable to expect the individual to draw attention to their own support needs (Plotnikoff & Woolfson, 2015). This may be an attempt to balance increasing individual autonomy whilst acknowledging the limitations of other individuals and the need for the police and CPS to intervene under such circumstances (Mechanic & Tanner, 2007). Some intermediaries also felt that the defence counsel have a role to play in highlighting vulnerability; this finding mirrors a growing acknowledgment that all in the justice system bear some responsibility to acknowledge vulnerability and to make provision or provide appropriate signposting in response (Plotnikoff & Woolfson, 2012, 2015).

All intermediaries highlighted a number of the challenges faced by vulnerable people once they are engaged in the justice system, with most drawing attention to the challenge of inappropriate language use and lack of understanding of legal process.

Intermediaries had not worked with a high number of vulnerable people overall which can be explained given that this is a very new role, particularly in the Australian Justice System. It is pertinent to note that the low average number of vulnerable people worked with does not reflect reported figures which demonstrate an over demand for service (Cooper, 2014b). High levels of attendance at relevant training for working with vulnerable people were found which is a compulsory requirement for the intermediary role. Overall, in terms of confidence, intermediaries demonstrated a reasonable level of self confidence in their ability to meet the needs of the vulnerable which may be attributed to their training and/or their prior experience working with vulnerable people (O'Mahony, 2010).

There was an increase in self confidence levels in association with increased number of vulnerable people worked despite no significant difference in confidence level based on length of time in role. Comments suggest that intermediary respondents were cautious in overstating their confidence as they reflect on the challenges of meeting the needs of the vulnerable in the justice system. Some examples include, "This entirely depends on each person I meet and assess... I'm still learning my way around the justice system... My practice isn't perfect but I think it's a challenging role... dependent on lots of factors." These comments mirror research that suggests intermediaries are appropriately judicious to appear overly confident in their role and recognise the widespread responsibilities their role now demands (O'Mahony, 2013).

The use of communication aids amongst intermediaries was high, which is unsurprising given that intermediaries often specialise in communication aid use. Drawing and use of body diagrams were the most used communication aids amongst the sample and they were considered either mostly effective, effective and very effective by

users. Some respondents had utilised dolls in their work and there was a mixed response to their utility in increasing effective communication, suggesting a need for further training and guidance in relation to their correct use (Poole & Bruck, 2012; Wakefield & Underwager, 2002). Most respondents had recourse to relevant academic literature and it was established that increased recourse to academic literature increases perceived effectiveness of drawing and body diagrams as communication aids. Increased recourse to academic literature also demonstrated slightly higher levels of self-reported confidence. These findings support the reading of relevant academic literature for all who are working with vulnerable people, something known to be a rarity amongst other legal practitioners (Bull, 2010; Henderson, 2003). UK based practitioners were found to have significantly higher levels of recourse to academic literature than Australian practitioners which may suggest a need for further education amongst this practitioner group as to its value in improving practice and knowledge of relevant techniques.

In terms of resources available to help support practitioners in their role, most intermediaries had been signposted to The Advocate's Gateway website (TAG) and associated resources during their compulsory training. Although it is unknown given the sample response to this survey, it is suggested that lawyers have much less awareness of TAG (Bull, 2010). Should calls for mandatory training on working with the vulnerable be brought to fruition for all lawyers, this may provide the arena to increase awareness and use of TAG amongst those, perhaps who need it most (Buck & Warren, 2009; McGillivray & Waterman, 2003). Intermediaries made much use of TAG toolkits and it was found that increased use of the toolkits were associated with slightly higher levels of confidence in role, providing further commendation for their wide spread use. Similarly to previous research with intermediaries in the UK, it was found that the

toolkits on Ground Rules hearings and working with very young children were most useful to the respondents in their roles (Cooper, 2014b).

Mirroring previous findings, intermediaries made calls for further toolkits to enhance their knowledge base and requested topic areas included assessment tools, working with trauma, working with those who display highly sexualised behaviours and sharing good practice on use of 'alternative' special measures (Cooper, 2014b). These calls are reminiscent of recent research that explored how intermediaries experience their role and found that intermediaries need additional training and resources as complex cases become commonplace in order to avoid cognitive dissonance, and also greater opportunity for best practice sharing to foster professional identity (O'Mahony, 2013; Plotnikoff & Woolfson, 2015). The cost of such additional support and training, although difficult would be more economically viable than having to recruit new intermediaries to replace those who take time out or come off the register completely due to role dissatisfaction (Plotnikoff & Woolfson, 2015).

In terms of TAG's impact, most intermediaries felt TAG had increased their knowledge of working with vulnerable people and all would recommend its use to other legal practitioners. There was little uptake of attendance at TAG organised events amongst respondents although Australian practitioners have had little opportunity to date. Additional resources were primarily used online as and when; intermediaries also commented on a need to improve TAG website structure and provide shorter, quick reference toolkits. These findings may suggest that intermediaries have limited time for accessing additional resources which may be associated with the part time, self-employed nature of the profession, something that may merit future review given the increasing issues around supply and demand (Cooper, 2014b; O'Mahony, 2013).

## **Implications**

One may conclude that the findings of this work imply that when the right individuals with the appropriate skill sets are recruited to roles working with vulnerable people, attend the necessary training and engage with additional resources, adequate provision for the vulnerable within the justice system can be achieved. What this work cannot tell us is the impact this has at large for vulnerable people within the justice system given that respondents were primarily intermediaries. Key implications will now be considered in turn whilst recommending areas for future research.

This work demonstrates a clear, identified role for the intermediary in supporting vulnerable people to communicate their best evidence within the justice system. Despite being relatively new in role, intermediaries are demonstrating a high level of understanding of the needs of the vulnerable, how to identify such individuals, what challenges they face and how to overcome those barriers whilst having regular recourse to guidance and academic literature to monitor their individual practice. Now more than ever before merits further consideration of how to broaden the scope of the intermediaries' work to ensure their specialist skills are being utilised by all those who can benefit (Brown & Lewis, 2013; Cooper & Wurtzel, 2014). Calls have been made for increased scope for the intermediary's role to encompass family and civil proceedings (Geddes, 2016). However, although statutory guidance here is imminent, projections are ominous given the recent narrowing of CPD (2015) in relation to intermediary allocation in order to control limited resources (Geddes, 2016).

Acceptance of the role of intermediaries is growing, despite some stubborn resistance, and demand is ever increasing, particularly with growing calls for equal

access for vulnerable defendants (Henderson, Heffer & Kebbell, 2016; O'Mahony, 2013; R v Anthony Christian [2015] EWCA Crim 1582; R v IA and others [2013] EWCA Crim 1308; R v Michael Boxer [2015] EWCA Crim 1684). Research suggests that lawyers cannot be expected to be communication experts and that intermediary use should be commonplace, pre, during and post-trial where vulnerability is identified regardless of legal sector or whether the vulnerable person is also the accused (O'Mahony et al., 2016).

Intermediaries are careful not to overstate their self-confidence and they acknowledge the challenges they face in meeting the growing demands within their profession. This can be associated with findings that intermediaries are predominantly utilised in highly complex cases putting heavy demands on their capabilities (Henderson, 2015a; O'Mahony, 2013). This is apace with their attempts to carve out a professional identity whilst under constant scrutiny, given the newness of the role and the financial costs of developing the role to meet demand (Brown & Lewis, 2013; Bull, 2013; O'Mahony, 2013). Empirical research is needed into the effectiveness of intermediary support from the perspective of the vulnerable individual and other legal personnel (Myklebust et al., 2016; O'Mahony et al., 2016). Future training needs to meet the growing demands of the service and further research must explore the influence of intermediary input, particularly on juror outcomes (Myklebust et al., 2016; O'Mahony et al., 2016). This is particularly pertinent in order to ensure the successful development of intermediary schemes, given the challenges faced in other jurisdictions when expanding the scope of the service (Coughlan & Jarman, 2002; Jonker & Swanzen, 2007). A clear gap between policy and practice is demonstrated in a recent report where only 1 individual, of 74 who were eligible, received intermediary



intervention; this under appointment may be explained by low levels of identification of vulnerability, another key implication of this work (Henderson, 2015a; Plotnikoff & Woolfson, 2009).

It is well established that identifying those deemed vulnerable, when they come into contact with the justice system has proven decidedly challenging (Charles, 2012; Ewin, 2016; Hunter et al., 2013). Although attempts have been made to address this issue, particularly by legislative change, improved guidance and training for the police and by covering such topics in academic literature, this work demonstrates that the need for better identification practices is ever present (Gudjonsson, 2010; Home Office, 2011). Research findings suggest that official recognition of vulnerable individuals by the police and CPS is much lower than the number of individuals identified by researchers and that the largest group that go unrecognised are individuals with mental disorders and mild to moderate learning difficulties (Burton et al., 2006; Gudjonsson, 2010). There has been some suggestion that huge advancements have been made in police identification of the vulnerable and associated interviewing practice (Walsh & Bull, 2010). But in stark contrast, alternative findings suggest that despite increased training and guidance for the police, there is still a fair way to go before adequate levels of identification amongst vulnerable individuals is seen (Antaki, Richardson, Stokoe & Willott, 2015; Oxburgh and Dando, 2011). Identifying those deemed vulnerable is the parapet from which all other aspects of support are determined and therefore this work identifies a real and prominent need to address this with all justice personnel expeditiously.

A further implication from the findings in this work is that, although provision of an intermediary is now in place to aid the vulnerable, this alone does not alleviate the

full spectrum of challenges faced, particularly as intermediaries are primarily utilised only in highly complex cases (Henderson, 2015a). Results in this work demonstrate that inappropriate language use remains a huge hurdle, notably for those deemed vulnerable, despite increasing guidance and research findings to demonstrate the immeasurable risks this poses on impacting witness testimony (ICCA, 2016; Memon et al., 2003; Murphy & Clare, 2006). Although intermediaries are present in some circumstances to help overcome this barrier, there is a real and pressing need for lawyers' to be trained, specifically in the use of appropriate language, as supported by the ICCA – "The real skill of formulating short, simple questions can be taught and learnt, and the practice in formulating such questions repays the effort – and humility involved" (2011, p. 37). E-learning modules will not suffice; training must address head on the issues highlighted in this work to ensure lawyers' take responsibility and modify their practice accordingly.

Calls for specialist training for all lawyers working with vulnerable people have been made for some time but progress is slow and piecemeal (Charles, 2012; Henderson, 2003; ICCA, 2011; Plotnikoff & Woolfson, 2015; Togher et al., 2006). The most recent report of the working group set up to introduce such training suggests that progress is being made for training implementation but that this may be limited to those lawyers working with vulnerable people in sexual offence cases (Judiciary of England and Wales, 2015). It is suggested that this is an oversight given that vulnerable people, particularly children are now more than ever called to give evidence in court and the training therefore should apply across the board, extending beyond the criminal justice system to family and civil law practitioners (Salmon, 2001).

Aside from the pressing need for training, the ongoing issues with inappropriate language use highlight a further implication from this work, that of the need for empirical research into questioning techniques (Bull, 2013). For some time, it has been acknowledged that the delay in guidance for practitioners in working with vulnerable people stemmed from a lack of research on which to base such guidance, particularly around how to question vulnerable people effectively (Nield et al., 2003). In recent years, there has been considerable empirical research to explore how best to elicit coherent and reliable testimony from the vulnerable during investigative interviews, particularly to better understand the stages of the Cognitive Interview and their impact on individuals with certain vulnerabilities (Mattison, Dando & Ormerod, 2015; Milne, Clare & Bull, 1999; Milne & Bull, 2001; Lamb et al, 2000, 2007, 2008). It is suggested that similar empirical research is required to better understand questioning techniques and language use within the court setting and its impact on those deemed vulnerable and their resulting witness testimony.

Most intermediaries who responded to this work made use of communication aids to help them facilitate communication between vulnerable clients and other legal practitioners. Further guidance is needed as to the effective and correct use of communication aids, particularly anatomically detailed dolls in order to improve perceived effectiveness of such tools and thus increase their appropriate use. The overriding message from research studies is that communication aids, particularly forms of drawing and use of body diagrams improve witness testimony but they must be used with caution to avoid misinterpretation and increased risk of false allegations (Mattison, 2016; Poole & Bruck, 2012; Salmon, 2001). The current guidance for lawyers and those legal professionals working in the court system is minimal; the RIPGM (2015) makes

clear that intermediaries should recommend and provide comment on communication aid use but makes no reference to the benefits and risks of use and the CPR (2015) lists possible communication aids for use by lawyers but provides no further guidance.

One may expect that intermediaries, recruited for their expertise in facilitating communication would have some knowledge of communication aid use but it is unfair to assume that all intermediaries would have a full grasp of the empirical evidence demonstrating the benefits and risks of use and certainly, lawyers even less so (Mattison, 2016). The underwhelming confidence in communication aid use in this work reiterates a clear need for further research, both laboratory based and in court related settings to establish how to enhance accuracy with communication aids (Mattison, 2016; Salmon, 2001). Increased specialism may also be required within the intermediary profession given the fairly low response rate to use of Augmentative Alternative Communication (AAC) methods (Genovese, Vallarino, & Farneti, 2010).

This research has demonstrated the power of recourse to relevant academic literature; its ability to educate, particularly about communication aid use and appropriate questioning technique and its association with increased self-confidence within role. Despite this, findings suggest that there was not a huge uptake amongst respondents which is surprising given their reference to TAG related resources. It is well known that lawyers have almost no recourse to such relevant research findings and in turn, implement few suggestions into their working practices (Kebbell & Hatton, 1999; Zajac, Gross & Hayne, 2003). Lawyers are largely ignorant to the vast psychological advancements in understanding vulnerable people and the cognitive, development and social challenges they face within the justice system; this is often attributed to their opposing aims and their limited understanding of the need for

increased awareness (Bull, 2010; Henderson, 2003; Krahenbuhl, 2011). There has been a general distrust of psychological research, particularly laboratory based research amongst legal practitioners for some time but recent suggestion is that there is a clear desire to improve practice within the profession by increased recourse to resources and guidance (Henderson, 2003, 2015a).

How and by whom such awareness raising is achieved is a far greater challenge but suggestion is that for cultural change to occur, which could provide the backdrop for improved recourse to such literature, there is a need to influence from within the profession as opposed to imposing change from outside (Henderson, 2015b). Training again may provide the platform from which such change can occur but one can be confident that if practitioners are willing to pave the way by increasing attention to pertinent research findings, they will reap the rewards in their improved working practices and in turn improved witness testimony.

TAG is utilised very well by intermediaries with regular attention paid to both toolkits and additional resources. In turn, this recourse increases individual confidence within role and provides improved knowledge from which to build on professional practice. These findings mirror similar conclusions of the most recent intermediary survey which also suggested that TAG use is widespread amongst the profession and its utility in improving practice is proliferate (Cooper, 2014b). In essence, the website and its associated resources work. The underlying question therefore is whether other legal practitioners, particularly barristers, solicitors and the judiciary access TAG and, given that the respondents to this survey were primarily intermediaries, the findings of this work do not shed further light here. Although suggestions can be made based primarily on previous research, little knowledge can be taken from this work in relation to

lawyers' perspectives on the needs, barriers and adaptations required for the vulnerable and whether resources such as TAG are utilised amongst the professions. Future research should be wider in scope to encompass barristers, solicitors and members of the judiciary in order to better evaluate their understanding of the needs of vulnerable people and whether they are accessing guidance and resources available for the benefit of vulnerable individuals encountering the justice system.

### **Limitations**

There are some limitations to this study which may have impacted on the findings and associated implications. The findings are based only on self-report responses to the survey and the pitfalls of self-reporting are numerous; spanning from the role of motive in self-perception and limited ability for introspection (Paulhus & Vazire, 2007). Despite this, the opportunity for individual perceptions within self-reporting cannot be underestimated and should therefore be conducted alongside other methods in future research such as court room observations and case file transcript analyses in order to minimise impression management and provide comparison with research in forensic police settings (Mattison, 2016; Paulhus & Vazire, 2007). A further limitation in this work may be the fairly small sample size and the issue of limited generalisability given that almost all respondents were intermediaries. However, the sample size is sufficient when considering the limited number of intermediaries working within the UK and Australian justice systems and the time restrictions for data collection (Cooper, 2014b). Although techniques are available to increase generalisability, it is suggested that the survey remains open and additional efforts are made to publicise this work to legal professionals, particularly lawyers and the judiciary in order to obtain a wider perspective (Agnew, 2006; Henderson, 2016; Lakes, 2013).

Another limitation, also due to time restrictions was the absence of a draft survey; utility of such a technique would have allowed for amended wording according to feedback and addition of any questions suggested in order to maximise the attainment of the survey (Robson, 2011). Common limitations within qualitative methods include subjectivity and reflexivity, which may limit the findings of this work given the researchers' history within the legal sector; it is hoped that any such issues were resolved by triangulation methods with the supervisor in conducting the content analysis, particularly to increase inter-coder reliability (Coolican, 2014).

### **Conclusion**

The aim of this study was to explore whether there is awareness amongst practitioners of challenges faced by vulnerable people in the justice system, and whether guidance and resources aimed at aiding practitioners is appropriately utilised for the benefit of vulnerable individuals. The study found that intermediaries, recruited to facilitate communication are well informed of the barriers faced by vulnerable individuals and the need for adaptive practices. The study also tentatively found that with increased recourse to academic literature and relevant guidance and resource, notably those found at The Advocate's Gateway, practitioners exhibited higher levels of confidence within role. The study has built on the burgeoning knowledge surrounding the pivotal role of the intermediary. However, given the limited response from other legal practitioners, generalisability to other professions is not possible and little remains known as to what is currently acknowledged amongst lawyers as to the needs of the vulnerable and whether they have any recourse to guidance and resources. This work reflects the widely made calls for training for all practitioners working with the vulnerable in the justice system; this can no longer be ignored and must be implemented

as a matter of urgency. It would be beneficial for further field research, particularly court observations and transcript analysis to explore lawyers' understanding of vulnerable persons' needs to feed into training programmes and to guide further resources in this area.



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**Appendix A – Script for participants**

**Dear Member,**

Invitation to participate in a survey evaluating the use and effectiveness of the information and guidance currently available about working with vulnerable persons in the justice system.

I am contacting you to invite you to participate in the above research. Participation involves completing a survey which should take no longer than 30 minutes to complete. The data that is collated will be strictly confidential and no personally identifying data will be requested. We would welcome any questions or queries that you may have regarding this research and would like to thank you in advance for considering taking part. Please follow the link below to participate –

<https://chester.onlinesurveys.ac.uk/evaluation-of-resources-available-in-supporting-vulnerable>

Kind Regards,

Rebecca Owen - 0700392@chester.ac.uk

Supervisor: Dr Michelle Mattison – m.mattison@chester.ac.uk/ 01244 513191

**Appendix B – Participant information sheet**

My name is Rebecca Owen and I am currently an MSc Psychology student at the University of Chester. I am conducting my dissertation under the supervision of Dr Michelle Mattison. My research focuses on an evaluation of resources and guidance (including The Advocate's Gateway) used by practitioners who work with vulnerable people in the criminal justice system.

**What will participation involve?**

As a practitioner who works in the justice system, I am inviting you to take part in this research. Participation involves completing a survey, which should take no longer than 20 minutes (depending upon the length of your responses). The data collected will be strictly confidential and anonymous; no personally identifying data will be requested or disclosed at any stage of the research. Participation is optional, and you do not have to answer all questions within the survey. You can withdraw from the research at any time, simply by closing your browser window; you do not have to provide a reason for withdrawal. Once the survey has been completed and you have clicked 'finish', withdrawal is no longer possible. Partially completed surveys will be analysed as far as is practicable. Data will be used for research, educational and training purposes.

**Contact information**

We welcome any questions or queries that you may have regarding this research. Please contact us as follows:

Rebecca Owen: 0700392@chester.ac.uk

Supervisor: Dr Michelle Mattison: m.mattison@chester.ac.uk or 01244 513191

Thank you for your support in this research project!

Rebecca Owen

**Consent to take part in survey**

This study has been approved by the Research Ethics Committee at the Department of Psychology, University of Chester.

By completing this survey, you agree to take part in the study and understand that:

- \* My participation in this research is voluntary and I am free to withdraw from the research at any time and without giving a reason;
- \* I am free to answer as many or as few sections of the survey as I wish;
- \* Data will be used for educational, research and training purposes;
- \* All data will be confidential and personal details will not be included in reports or publications;
- \* Should the research be published and the data made available, it will only be provided in a form that preserves the anonymity of all participants;
- \* My data will be collected, processed and stored according to the Data Protection Act of 1998 and will be destroyed after a minimum of 10 years.

**Appendix C – Ethics application**





**Appendix D** – Ethics amendment forms



## Appendix E - Survey

### **Communicating with vulnerable people in the justice system**

#### Section A – About you and your work

1. What is your current role in the justice system?

2. How long have you worked in your current role?

3. What area(s) of law is the focus of your work?

- Criminal
- Family
- Civil

4. What region and country do you work in?

5. What characteristics do you think make a person vulnerable in the justice system?

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6. In the last 12 months, how many vulnerable people have you worked with as part of your role in the justice system? (if none please enter zero)

7. Please list any training (including the provider) that you have participated in regarding working with vulnerable people.

8. On a scale of 1-7 (1=Not confident at all, 7=Very confident), how confident are you in being able to meet the needs of a vulnerable person to access justice in your current role?

Please tell us more about your answer –

### Section B – Working with vulnerable people in the justice system

1. Who is responsible for identifying possible vulnerabilities in witnesses, victims and defendants in the criminal justice system?

- ☐ Police
- ☐ CPS
- ☐ Prosecution counsel
- ☐ Defence counsel
- ☐ Other – please specify -

2. In your own professional experience, what challenges do vulnerable people face within the justice system?

3. One form of assistance for vulnerable people in the justice system is the use of an Intermediary. Have you worked on a case that made use of an Intermediary?
- Yes
  - No

4. Overall, how effective would you consider the use of an Intermediary?  
Likert scale from 1 (not effective at all) to 7 (extremely effective)

5. Have you used communication aids (e.g., drawing, body diagrams, dolls, computer or alternative system) when working with a vulnerable person?

- ☐ Yes  
☐ No

If yes, please state which aids you have used and whether or on a scale of 1 – 7 how effective they were in aiding communication.

6. If you have used other communication aids, please tell us what they were and how effective they were in aiding communication.

7. How often do you read academic research articles about vulnerable people and their experiences of the justice system?

- ☐ Never
- ☐ Rarely
- ☐ Often
- ☐ Almost always
- ☐ Always

### Section 3 – The Advocate’s Gateway

1. Are you aware of The Advocate’s Gateway?

- ☐ Yes
- ☐ No

2. If yes, how did you hear about The Advocate’s Gateway?

3. Have you ever used the toolkits found on The Advocate’s Gateway to assist you in working with vulnerable people?  
If yes, please tell us which resource(s) and how it helped.

4. How often have you referenced the toolkits in your work?

- ☐ Never
- ☐ Rarely
- ☐ Often
- ☐ Almost always
- ☐ Always

5. Please tell us which toolkits are most useful in your work (tick all that apply).

- ☐ (1)Ground rules hearings and the fair treatment of vulnerable people in court
- ☐ (1a)Case management when a witness or defendant is vulnerable
- ☐ (1b)Case management in young and other vulnerable witness cases - summary
- ☐ (2)General principles from research, policy and guidance: planning to question a vulnerable person or someone with communication needs
- ☐ (3)Planning to question someone with an autism spectrum disorder including Asperger syndrome
- ☐ (4)Planning to question someone with a learning disability
- ☐ (5)Planning to question someone with 'hidden' disabilities: specific language impairment, dyslexia, dyslexia, dyspraxia, dyscalculia and AD(H)D
- ☐ (6)Planning to question a child or young person
- ☐ (7)Additional factors concerning children under 7 (or functioning at a very young age)
- ☐ (8)Effective participation of young defendants
- ☐ (9)Planning to question someone using a remote link
- ☐ (10)Identifying vulnerability in witnesses and defendants



- ☐ (11) Planning to question someone who is deaf
- ☐ (12) General principles when questioning witnesses and defendants with mental disorder
- ☐ (13) Vulnerable witnesses and parties in the family courts
- ☐ (14) Using communication aids in the criminal justice system
- ☐ (15) Witnesses and defendants with autism: memory and sensory issues
- ☐ (16) Intermediaries step by step
- ☐ (17) Vulnerable witnesses and parties in the civil courts
- ☐ (18) Working with traumatised witnesses, defendants and parties

6. Please tell us which toolkit is least useful in your work.

- ☐ (1) Ground rules hearings and the fair treatment of vulnerable people in court
- ☐ (1a) Case management when a witness or defendant is vulnerable
- ☐ (1b) Case management in young and other vulnerable witness cases - summary
- ☐ (2) General principles from research, policy and guidance: planning to question a vulnerable person or someone with communication needs
- ☐ (3) Planning to question someone with an autism spectrum disorder including Asperger syndrome
- ☐ (4) Planning to question someone with a learning disability
- ☐ (5) Planning to question someone with 'hidden' disabilities: specific language impairment, dyslexia, dyslexia, dyspraxia, dyscalculia and AD(H)D
- ☐ (6) Planning to question a child or young person
- ☐ (7) Additional factors concerning children under 7 (or functioning at a very young age)
- ☐ (8) Effective participation of young defendants
- ☐ (9) Planning to question someone using a remote link
- ☐ (10) Identifying vulnerability in witnesses and defendants

- ☐ (11) Planning to question someone who is deaf
- ☐ (12) General principles when questioning witnesses and defendants with mental disorder
- ☐ (13) Vulnerable witnesses and parties in the family courts
- ☐ (14) Using communication aids in the criminal justice system
- ☐ (15) Witnesses and defendants with autism: memory and sensory issues
- ☐ (16) Intermediaries step by step
- ☐ (17) Vulnerable witnesses and parties in the civil courts
- ☐ (18) Working with traumatised witnesses, defendants and parties

7. Have you attended any of the events arranged by The Advocacy Training Council as advertised on The Advocate's Gateway?

- ☐ Yes
- ☐ No

If yes, please tell us about the event and provide any feedback.

8. Have you made use of the additional resources available on The Advocate's Gateway?

- ☐ Yes
- ☐ No

If yes, please tick all that apply.

- ☐ Procedure
- ☐ Speeches
- ☐ Articles
- ☐ Books
- ☐ Reports
- ☐ Videos/DVD's

## VULNERABLE PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

9. Having used The Advocate's Gateway, on a scale of 1-7 (1=Not at all, 7=Very much), how much do you feel that it has increased your knowledge of the necessary communication support needed for vulnerable people in the justice system?

10. If you could request a specific toolkit on a given topic that would assist you in working with vulnerable people, what would it focus upon?

11. Please tell us what you find most useful about The Advocate's Gateway.

12. Please tell us what you find least useful about The Advocate's Gateway.

13. Tell us how The Advocate's Gateway can expand its resources in the future to better support you in working with vulnerable people in the justice system.

14. Would you recommend The Advocate's Gateway to a colleague or other professional?

☐ Yes

☐ No

15. Apart from the Advocate's Gateway, please list any other resources that you have used when working with vulnerable people, and tell us how effective they were (scale 1 – 7).

**Appendix F – Debrief information sheet**

Thank you for taking the time to participate in this research.

The data will be collated and analyses will explore the various uses and effectiveness of the resources available to practitioners. Whilst the answers given in this research may be recorded, no personally identifiable information will be disclosed at any stage of the research process.

If you have any queries or questions relating to this research, please do not hesitate to contact me: (Rebecca Owen: 0700392@chester.ac.uk).

Alternatively, please contact my supervisor, Dr Michelle Mattison on m.mattison@chester.ac.uk/ 01244 513191.

If you would like further support, please visit:

The Bar Council: <http://www.barcouncil.org.uk/supporting-the-bar/member-services/personal-support-for-barristers/>

LawCare: <http://www.lawsociety.org.uk/support-services/help-for-solicitors/>

Thank you once again for participating in this research!